



3 1761 03620 6274

GUIDE TO DUTIES MARTIAL DUTY

BY
MAJOR T. KING

Late Royal Berkshire Regiment

1/6

LONDON
FORSTER GROOM & CO., LTD.
MILITARY PUBLISHERS
15 CHARING CROSS, S.W.

1915



Presented to
The Library
of the
University of Toronto
by

Eric Arnould, Esq., K.C.

Law
Const
K 545g

GUIDE TO COURTS MARTIAL DUTY

BY
MAJOR T. KING

LATE ROYAL BERKSHIRE REGIMENT

241195.
26. 2. 30.

LONDON
FORSTER GROOM & CO., LTD.
MILITARY PUBLISHERS
15 CHARING CROSS, S.W.

1915



P R E F A C E


My object in writing this book is to assist officers in conducting the proceedings of courts martial. I have given details as to the Prosecutor and President regarding the various courts, and it is very essential that the facilities and privileges that the accused is entitled to, both before the assembly of the Court and during the trial, should be understood by all officers.

I have confined myself to the procedure of courts martial only.

As regards the various offences, see the Army Act sections 4-41 ; *Manual of Military Law*, pages 371, 372 and 378-413.

Chapter V of the *Manual of Military Law* should be read, pages 35-54, and the Rules of Procedure, *Manual of Military Law*, pages 571-642.

It is advisable, when the Court is sitting, to keep the memoranda before the Court as laid down in the *Manual of Military Law*, page 703 ; and when determining the sentence King's Regulations para 583 (xi) may be referred to with advantage.



Digitized by the Internet Archive
in 2010 with funding from
University of Toronto

CONTENTS

	PAGE
CHARGES AND HOW TO FRAME THEM . . .	9
ACCUSED PREPARES HIS DEFENCE BEFORE TRIAL	10
WITNESSES ORDERED TO ATTEND COURT	
MARTIAL	11
JOINT TRIAL	11
COUNSEL	11
COUNSEL OR THE FRIEND OF ACCUSED . . .	11
PROSECUTOR	12
THE PRESIDENT OF A COURT MARTIAL . . .	13
THE PROSECUTOR	14
THE JUDGE ADVOCATE	15
FIELD GENERAL COURT MARTIAL	16
PROVOST MARSHAL	16
THE ORDER OF ASSEMBLY OF COURT MARTIAL	17
LEGAL INQUIRIES BY THE COURT	17
OBJECTIONS, ETC.	18
OBJECTIONS BY ACCUSED TO COURT	18

	PAGE
COURT AND WITNESSES SWORN	18
ARRAIGNMENT OF THE ACCUSED	19
CHARGE DEFECTIVE	19
PLEA TO JURISDICTION OF THE COURT	19
PLEAS RAISED	20
PLEA IN BAR OF TRIAL	20
PLEA OF GUILTY	20
PLEADING GUILTY TO LESS SERIOUS ALTERNATIVE CHARGE	21
PLEA OF NOT GUILTY	21
NOT GUILTY	21
THE PROSECUTION IS CLOSED	22
THE ACCUSED DOES NOT CALL WITNESSES IN HIS DEFENCE	22
THE ACCUSED CALLS WITNESSES IN HIS DEFENCE	23
JUDGE ADVOCATE SUMS UP	23
THE FINDING OF A COURT MARTIAL	24
SPECIAL FINDING	24
COGNATE OFFENCES	25
INSANITY OF ACCUSED	25
PROCEEDINGS BEFORE SENTENCE, PARTICULARS AS TO CHARACTER AND SERVICE OF THE ACCUSED	25

CONTENTS

7

PAGE

SENTENCE	25
RECOMMENDATION TO MERCY	27
WRITING THE SENTENCE IN DAYS, ETC.	27
SENTENCE ON AN OFFENDER WHO IS UNDER- GOING PUNISHMENT BY A PREVIOUS COURT MARTIAL	27
DATING AND SIGNING THE PROCEEDINGS	28
RULES FOR FIELD PUNISHMENT	28
CUSTODY OF PROCEEDINGS OF COURT MARTIAL, LOSS OF PROCEEDINGS OF COURT MARTIAL	29
PROMULGATION OF SENTENCE OF COURT MARTIAL	29
REVISION OF A COURT MARTIAL	30
COURSES OPEN TO THE COURT	30
POWERS OF THE CONFIRMING OFFICER	31
A COURT OF INQUIRY ON ILLEGAL ABSENCE	31

REFERENCES TO ABBREVIATIONS

A.A., sec. 4, means Section 4 of the Army Act.

A.A.A., means Army Annual Act.

A.O., means Army Orders.

K.R., 490, means *King's Regulations*, paragraph 490.

M.L., chap. iii., para. 8, means Chapter III. of
the *Manual of Military Law*, paragraph 8.

M.L., p. 721, means *Manual of Military Law*,
page 721.

R.P., 8, means *Rules of Procedure*, paragraph 8.

Guide to Courts Martial Duty

CHARGES AND HOW TO FRAME THEM.

Find out under what section of the Army Act the charge or charges come—then *vide* page 660, *Manual of Military Law*, and frame the charge.

Charges.

A.A., sec. 4-41.
M.L., pp 370,
371, and 378-413.

A charge sheet contains one or more charges.

R.P., 9.

The charge states the regimental number, rank, name, and corps of the accused and if he belongs to the regular or auxiliary forces or the special reserve.

R.P., 10.

A.A., sec. 190
(12).

The charge is divided into two parts :

R.P., 11.

(1) The statement of the offence in the words of the Army Act ; e.g. “ Drunkenness.”

A.A., sec. 19.

(2) The particulars of the offence ; “ in that he at Dover on the 19 Sept., 1915, was drunk.”

A soldier can be tried for making away with his kit, arms, clothing, medals, etc., by pawning or selling them ; or losing by neglect as above ; except medals, which cannot be charged, “ lost by neglect.”

A.A., sec. 24.

10 GUIDE TO COURTS MARTIAL DUTY

A.A., sec. 24.

Alternative charges are used when there is doubt what offence has been committed : e.g., a man might be charged with pawning his boots ; if in doubt an alternative charge of losing them by neglect can be added.

K.R., 565.

The value of deficient articles will not be entered in charge except they are Government property.

**M. Law, pp. 682,
703.**

If the accused has appealed to be tried by court martial instead of submitting to his commanding officer's punishment, the fact should be noted in red ink opposite the charge.

ACCUSED PREPARES HIS DEFENCE BEFORE TRIAL.

**Accused prepares
his defence
before trial.**

R.P., 13, 14, 15,

Facilities that should be given to the accused to prepare his case for trial by court martial :

(1) He shall be given a copy of the charge or charges to be brought against him, and also one of the summary of evidence : be given at least twenty-four hours to prepare his defence in the case of being tried by a general or district court martial, and eighteen hours if a regimental court martial is ordered.

(2) He shall be told the date, place, and time of the assembly of the court and the names of the officers who are detailed as members, waiting members if any, and of the Judge Advocate, if one is appointed. He shall be asked for the names of any witnesses whom he may desire to call in his defence, and they shall be ordered to attend the court.

GUIDE TO COURTS MARTIAL DUTY 11

WITNESSES ORDERED TO ATTEND COURT MARTIAL.

All witnesses will be ordered to attend a court martial by the convening officer, or, after assembly of the court, by the President. Witnesses not subject to military law may be summoned to attend by the convening officer, the president, the commanding officer of the accused, or the Judge Advocate.

Witnesses ordered to attend court martial.

R.P., 78.

R.P., 14.

JOINT TRIAL.

If the accused is to be tried jointly with other men, he shall be informed of the fact at the time he is warned for trial, as he may desire to call on a person whom it is proposed to try with him at the same time to give evidence in his defence, and on this ground claim a separate trial, or he could do so when arraigned before the court martial, because after the court has been sworn he cannot call on such a person to give evidence.

Joint Trial.
R.P., 15.

M.L., chap. vi.,
para. 84.
R.P., 31.

COUNSEL.

The accused must be allowed to consult counsel, and see his witnesses. If counsel is employed by the prosecution, seven days' notice should be given to the accused.

Counsel.
R.P., 87 and 89.
K.R., 574.

COUNSEL OR THE FRIEND OF ACCUSED.

Persons connected with the legal profession attending at courts martial.

Counsel or the friend of accused.

Counsel includes a barrister of England or Ireland, or a solicitor, or a law agent or advocate of Scotland.

M. L., chap. vi.,
para. 101.
R.P., 93.

An officer subject to military law can also appear on behalf of the accused, and has the

R.P., 87.

12 GUIDE TO COURTS MARTIAL DUTY

same rights as counsel: viz., addressing the court, examining witnesses, re-examining and cross-examining them. No person who is not subject to military law, who assists the accused at a court martial, has the rights of counsel.

K.R., 574.

In the United Kingdom the employment of counsel will rarely be required for the prosecution. Should counsel be employed by the prosecution, the permission of the Army Council should be first obtained—if abroad, if counsel is required and engaged by the prosecution, the fact will be reported to the Army Council.

R.P., 89.

If the accused intends to employ counsel, he should give seven days' notice, or such shorter time as in the opinion of the court would have enabled the prosecutor to obtain the services of counsel if he thought it necessary.

R.P., 90.

Counsel for the prosecution must always make an opening address to the court.

PROSECUTOR.

R.P., 94.

When the accused is defended by counsel or an officer subject to military law, he may make a statement or give evidence himself; he need not do either, and he cannot do both. Should he make a statement it is not on oath, and he cannot be examined on it.

A statement differs from evidence if given by him.

It is not on oath: may be written: it is given from where he stands, and not as a

series of questions and answers, is not subject to the rules of evidence, and he cannot be cross-examined on it.

THE PRESIDENT OF A COURT MARTIAL.

The president must be appointed by name in the order for the court to assemble :

President at court martial.
K.R., 577.

(1) In the case of a District Court Martial, if he is under the rank of captain, add : In the opinion of the convening officer, a captain is not, having due regard to the public service, available.

M.L., p. 679.
A.O., April, 1914, 110.

(2) Read the order for the court to assemble, and see that the members of the court are all present ; and conduct the court in a manner befitting a court of law.

R.P., 22, 23.

If the charge wants altering except in minor details, refer to the convening officer.

R.P., 59.
R.P. 17, 22, 33.

He summons witnesses to attend if required after the court has been assembled. The oath is administered by him to all members of the court, and to him by the senior member ; he is also responsible that the oath is administered to officers under instruction, the interpreter, and any shorthand writer.

R.P., 78.
A.A., sec. 52.

R.P., 26.
R.P. 72.

All transactions shall be recorded in writing ; questions and answers numbered in the proceedings, and any alterations initialed by him.

R.P., 95.

The summary of evidence is laid before the court, and the president notes if the evidence given by a witness agrees with the statement he made, which is contained in it ; if not he should assist the accused in finding why there is a discrepancy in his evidence.

A.A., sec. 59,
note.

14 GUIDE TO COURTS MARTIAL DUTY

R.P., 69.
A.A., sec. 53

Votes are collected by him on all questions raised, and the proceedings are signed by him and forwarded as directed in the order for the assembly of the court.

M.L., p. 677.

THE PROSECUTOR.

M.L., chap. v.,
para. 30.
Prosecutor.

Before the trial takes place he is entitled to be given a copy of the charge or charges against the accused, and one of the summary of evidence; he is to act impartially, and equally with the president, assist the accused to conduct his defence if an unintelligent man, and keep nothing back which might tell in his favour.

K.R., 575.

M.L., chap. v.,
para. 58, and
R.P., 84.

He can examine witnesses and re-examine them if called for the prosecution, and cross-examine the witnesses called for the defence. Address the court if necessary—always in cases of embezzlement—and as the address is in writing, it is attached to the proceedings, and signed by the president.

R.P., 39.

M.L., p. 682
and 703 note.
A.A., sec. 86.
K.R., 575.

If the accused appealed to be tried by district court martial instead of submitting to his commanding officer's award; or if the accused was drunk when he committed the offence, and a charge of drunkenness is not brought against him, the prosecutor shall inform the court.

R.P., 60.

He must not comment on the fact that the accused has not given evidence himself, or that he has not called his wife as a witness; but he can do so if the accused gave evidence after any witnesses he may have called in his defence.

R.P., 40 and 41.

If the accused is charged with desertion or absence without leave, and has surrendered to the military authorities, the prosecutor shall lay a certificate to that effect (signed by the soldier's commanding officer) before the court.

The prosecutor is not bound to call the witnesses whose names are contained in the summary of evidence for the prosecution; but if a witness is held back by the prosecutor, the accused can demand that he is called upon to give evidence. Again, if a witness is produced whose name is not in the summary of evidence, the accused can demand time to prepare the cross-examination of this witness. R.P., 75 and 76.

The prosecutor produces documentary evidence as to character and particulars of service of the accused. M.L., p. 693.

THE JUDGE ADVOCATE.

He must always be appointed to attend at a general court martial, and may be to a district court; once he has been appointed, the court cannot proceed without him, or another Judge Advocate being appointed. He always remains present in court. R.P., 100 to 103.
M.L., p. 722.
The judge advocate.

If the charge is defective, he informs the president of the court, and the convening officer. He must be impartial, and also he must assist the accused if necessary to examine and re-examine his own witnesses and cross-examine hostile witnesses. R.P., 12 and 33.

After he has been appointed at any time,

16 GUIDE TO COURTS MARTIAL DUTY

the accused or the prosecutor are entitled to have his advice on points of law.

The court should be guided by his advice. If they do not take his legal advice, it is recorded in the proceedings. He may comment if he sums up on the fact that the accused did not call on his wife to give evidence or do so himself, also that he gave evidence before the witnesses he called in defence.

R.P., 63.

FIELD GENERAL COURT MARTIAL.

A.A., sec. 49.
Field general
court martial.

The procedure to be followed depends on circumstances; but it should be as near as possible to an ordinary court.

For the form to be used, "on active service or not on active service," vide pages 700 and 701, *Manual of Military Law*.

R.P., 107.

If the exigencies of the service do not permit of the form at page 701 (*Manual of Military Law*) being used, the proceedings of the court can be carried on without being written; except that a written record must be kept as far as practicable by the provost marshal or his assistant if present, if not by the president, stating the name of the accused if known; if unknown, his description, the details as to the charge, the finding and the sentence of the court, also the recommendation to mercy.

PROVOST MARSHAL.

Provost
marshal.
A.A., sec. 74.
K.R., 599.

The provost marshal can arrest persons subject to military law. He, or his assistant, can carry out the sentence of courts martial,

GUIDE TO COURTS MARTIAL DUTY 17

but must not inflict any punishment themselves on any offender.

For the procedure observed at a court martial from the time the court opens until the proceedings are concluded *vide* " Rules of Procedure," paras. 16–100, *Manual of Military Law*, pages 679–698.

THE ORDER OF ASSEMBLY OF COURT MARTIAL

When the court assembles, the order for convening it is read, marked, and signed by the president, and attached to the proceedings. All the officers forming the court answer their names.

M.L., p. 679.
The order of
assembly of
court martial.

LEGAL INQUIRIES BY THE COURT.

On assembly of the court the members satisfy themselves on the following points:

R.P., 22 and 23.

- (1) As regards the constitution of the court ;
- (2) As regards the accused ; (3) As regards the charge.

(1) The members of the court satisfy themselves that the court has been convened in accordance with the Army Act and the Rules of Procedure.

Legal inquiries
by the court.

A.P., 22, 23.

That the officers composing the court are eligible and not disqualified to sit as members of the court.

R.P., 19.

A.A.

That the president is of the required rank—and in the case of a General Court Martial the officers are also of the required rank ; that the court consists of the legal minimum of officers—and that the Judge Advocate is duly appointed.

K.R., 578.

R.P., 21

A.A., sec. 48.

R.P., 23.

(2) As regards the accused, that he is subject to military law—and that the court have the power to try him. A regimental court martial could not try a warrant officer: or a camp follower on active service.

A.A., sec. 182.

M.L., p. 534.

(3) That the offence disclosed is one under the Army Act, and the accused is subject to military law.

A.A., sec. 175.

R.P., 23.,

18 GUIDE TO COURTS MARTIAL DUTY

OBJECTIONS, ETC.

(4) The accused is then asked by the president if he objects to be tried by him or any of the members of the court. If he does so, he is asked to state his reasons, and he can support them by calling witnesses.

Objections, etc.
R.P., 25.

(a) If the president is objected to with others, this objection is decided first; then any member.

A.A., sec. 51.

(b) If two or more members are objected to, the case of the junior member is first decided.

(c) One-third of the votes of the members displaces the president; one-half a member of the court.

OBJECTIONS BY ACCUSED TO COURT.

If the court overrule any objections, the trial continues.

Objections by
accused to court.
R.P., 18.

If the president is successfully objected to, he shall adjourn the court and report the fact to the convening officer, who can appoint a new president or the senior officer of the court present, if the legal number of officers are present and the senior member is of the required rank.

A.A., sec. 51.
R.P., 25.

If a member is absent the court can proceed if the legal number is present—otherwise they must report to the convening officer.

A.A., secs. 47
and 48.

COURT AND WITNESSES SWORN.

The court is sworn by the Judge Advocate, if present; otherwise by the president; the senior member then administers the oath to the president.

Court and
witnesses sworn.
R.P., 82.

GUIDE TO COURTS MARTIAL DUTY 19

Every witness is sworn to give evidence according to his religious belief; a witness can make a solemn declaration which will be equally as binding upon him as if he took an oath. A note should be added in the proceedings that he did so instead of being sworn.

R.P., 26 to 30.
A.A., sec. 52.

ARRAIGNMENT OF THE ACCUSED.

The accused is now arraigned, and the charge or charges are read out to him in the presence of all persons, such as the witnesses for and against him.

Arraignment of
the accused.
R.P., 31.

Before pleading to a charge, the accused can object to any charge in the charge-sheet, on the ground that no offence under the Army Act is disclosed in a charge.

R.P., 32.

CHARGE DEFECTIVE.

If before the court is sworn a charge is found defective in some minor detail, such as the accused being wrongly described as to his name, or number, the president can alter it, provided the accused suffers no injustice. But where the charge is totally defective, the case must be reported to the convening officer, but after the court is sworn. Sometimes it is possible to meet the case by a special finding and the court proceeds.

Charge defective.
R.P., 12 and 33.

PLEA TO JURISDICTION OF THE COURT.

The accused can raise a special plea to the jurisdiction of the court on the ground that it has not power to try him :

R.P., 34.
Plea to
jurisdiction of
the court.

Example.—A camp follower cannot be tried, on active service, by a regimental court martial.

M.L., p. 534.

20 GUIDE TO COURTS MARTIAL DUTY

R.P., 34.

If the court overrule the objection, they proceed with the trial. If they do not do so, or they are in doubt, they refer to the convening officer.

PLEAS RAISED.

Pleas raised.
R.P., 35.

The accused may plead "Guilty—Not guilty." "Guilty" to some charges—"Not Guilty" to other charges.

(2) Before asking the accused to plead to the charge all witnesses should be ordered to leave the Court.

PLEA IN BAR OF TRIAL.

Plea in bar of trial.
R.P., 36.

The accused can plead to the charge; but at the same time raise a plea in bar of trial, as under:

M.L., chap. v.
para. 5.

(a) That he has been tried before for the same offence, and punished by his commanding officer, or court martial, or pardoned for the offence—or it has been condoned.

A.A., sec. 158
and 161.

(b) Again, that the offence is barred by the time that has elapsed since the offence was committed and the accused being brought to trial.

PLEA OF GUILTY.

Plea of guilty.
R.P., 35.

When the accused pleads guilty, the president shall tell him if he does so, he cannot call any witnesses in his defence except as to character. He will also see that he understands the nature of the charge. For example:

A.A., sec. 12.
M.L., chap. iii.,
para. 13.

On a trial for desertion, if a man pleads "Guilty" but says he intended to come back, the President should tell him to plead "Not Guilty," because the essence of the charge of desertion is that he does not intend to return to His Majesty's service.

GUIDE TO COURTS MARTIAL DUTY 21

PLEADING GUILTY TO LESS SERIOUS ALTERNATIVE CHARGE.

Where there are alternative charges, and the accused pleads "Guilty" to the less serious charge, the court, if they decide to proceed with the more serious charge, proceed as though the accused had pleaded "Not Guilty" to any charge. Before recording the plea of "Guilty," the summary of evidence is read to the court, signed by the president and attached to the proceedings, and the accused is found "Guilty."

A.O., 110,
April 1914.

Pleading guilty
to less serious
alternative
charge.

PLEA OF NOT GUILTY.

If the accused refuses to plead, or does so in an unintelligent manner, or in a foreign tongue, he shall be tried as not guilty.

Plea of not
guilty.

M.L., chap. v.
para. 56.

NOT GUILTY.

When the accused pleads "Not Guilty," it rests with the prosecutor to prove his guilt by bringing sworn evidence.

Not guilty.

R.P., 39.

The prosecutor can make an opening address—and should do so if embezzlement is the subject of the charge; the address is in writing, is signed by the president, and is attached to the proceedings. After being delivered, any comment in the address which is not relevant to the case must be struck out by the president.

R.P., 60 note (3).

The prosecutor in exceptional circumstances can give evidence against the accused; but, if he does so, he shall do so before he calls any witnesses for the prosecution.

M. Law, chap. vi.,
para. 106 to 119.
R.P., 39 note.

N.B.—All witnesses, whether for the R.P., 81.

22 GUIDE TO COURTS MARTIAL DUTY

prosecution or defence, are examined separately after being sworn by the court.

R.P., 84.

The prosecutor then calls his witnesses and examines them, or asks the witness to make a statement to the court—this is called the examination in chief.

R.P., 84.

The accused, or any one defending him in a legal capacity, can cross-examine the witness.

The prosecutor can re-examine the witness. The court for their own satisfaction can ask the witness any questions.

R.P., 83.

The evidence given by a witness is read over to him before he withdraws from the court, and he is asked if it is correct. The accused can cross-examine him on any matter he has altered in his evidence.

R.P., 85.

The members of the court can always ask any question before the witness leaves the court.

THE PROSECUTION IS CLOSED.

M. Law, chap. vi.
para. 13.

The evidence for the prosecution is closed, and now the accused brings evidence to prove his innocence.

THE ACCUSED DOES NOT CALL WITNESSES IN HIS DEFENCE.

F.R.P., 40.
The accused does
not call witnesses
in his defence.

The accused will be asked if he wishes to give evidence on his own behalf.

There are two cases to be considered :

(1) When the accused gives evidence on his case, but does not call witnesses.

(2) When the accused gives evidence and calls witnesses in his defence.

He can be cross-examined by the prosecution. If he does not give evidence, the prosecutor can address the court. The accused then is asked if he has anything to urge in his defence.

He can call witnesses as to his character. The prosecutor on oath can produce documentary evidence of previous convictions.

**M. Law, p. 693,
M.L., chap. vi.,
para. 17.**

The second case is when the accused calls witnesses to give evidence in his behalf.

R.P., 41.

THE ACCUSED CALLS WITNESSES IN HIS DEFENCE.

(1) The accused will be asked to make his defence: the value of it greatly depends on the witnesses he calls to substantiate it.

**The accused
calls witnesses
in his defence.
R.P., 82 to 85.**

(2) If he elects to give evidence himself, he should do so before any of his witnesses.

(3) The examination in chief of his witnesses then takes place.

(4) The cross-examination of his witnesses by the prosecutor.

(5) Re-examination by the accused of his witnesses.

(6) Court asks witness any question.

(7) Evidence of witness read over before he withdraws from court.

(8) The accused may address the court.

(9) The prosecutor may reply.

JUDGE ADVOCATE SUMS UP.

The Judge Advocate may sum up, if necessary, such being recorded in the proceedings—he does so like a judge at a civil court,

**Judge Advocate
Sums up.
R.P., 42.
R.P., 103 (c).**

24 GUIDE TO COURTS MARTIAL DUTY

THE FINDING OF A COURT MARTIAL.

Finding.
R.P., 43.
R.P., 63.

The court is closed for the purpose of deliberating on the finding—no one may remain present except the members of the court, the officers under instruction, and the Judge Advocate if there is one appointed.

The opinion of each member shall be taken separately on each charge; the junior member first voting.

R.P., 45.

In case of equality of votes, the accused is acquitted and the verdict will be pronounced in open court, and the accused will be released; the president will date, sign the proceedings, and send them to the confirming officer. If present, the Judge Advocate does so.

A.A., sec. 53 (8).

R.P., 44 note.

Any person can be honourably acquitted if the charge on which he is tried affects his character.

SPECIAL FINDING.

Special finding.
A.A., sec. 20.

The court can in some cases record a special finding.

(a) Where the accused is tried for an offence which entails a higher punishment he can be found guilty of the offence under conditions which entail a lesser punishment: e.g. A corporal is tried for wilfully permitting a soldier under his charge to escape: the court might find him guilty of the offence, but not being wilful.

(b) Where the charge is proved, but there are some discrepancies in the particulars: e.g. A soldier is tried for stealing eight pairs of boots: the evidence shows he only stole four pairs of boots.

GUIDE TO COURTS MARTIAL DUTY 25

COGNATE OFFENCES.

In military law a court martial can try the following cognate offences and record a special finding.

(a) A soldier tried for desertion may be found guilty of "attempting to desert," or of "absence without leave." Cognate offences.
A.A., sec 5).

(b) Attempting to desert, guilty of desertion, or absence without leave. A.A., sec. 12.

(c) "Stealing"—guilty of embezzlement or fraudulently misapplying money or property.

(d) Embezzlement, guilty of stealing, or fraudulently misapplying money or goods.

INSANITY OF ACCUSED.

If the court find the accused was insane when he committed the offence, they can record a special finding. The president signs, dates the proceedings, and sends them for confirmation.

Insanity of accused.
R.P., 57.
A.A., sec. 130.

PROCEEDINGS BEFORE SENTENCE, PARTICULARS AS TO CHARACTER AND SERVICE OF THE ACCUSED.

When the court finds the accused guilty of the charge or charges, they take evidence of character, the prosecutor is duly sworn and produces extracts from the regimental conduct sheet. The court compares these with the original entries in this book to see they are correct with the extracts, which are then attached to the proceedings.

Proceedings before sentence, particulars as to character and service of the accused.
M.L., p. 693.
R.P., 46.
K.R., 1919.

SENTENCE.

(1) The Army Act, from sections 4-41, states the maximum punishments a court martial can award for the offence under the section in which it is

Sentence.
M.L., p. 695.
A.A., sec. 4 to 41.

26 GUIDE TO COURTS MARTIAL DUTY

being tried ; but the King's Regulations show the approximate sentence a court martial usually awards the accused under ordinary conditions.

K.R., 583.

R.P., 69.

(2) All the members of the court must vote, commencing with the junior member of the court. If votes are equal, the president has a second, or casting vote.

K.R., 583.

A.A., sec. 32.

(3) It is not advisable for a sentence of imprisonment to be passed except for serious offences, and those which render the accused liable to "discharge with ignominy."

A.O., 224, 1911.

(4) The court should not under ordinary circumstances award a more severe sentence than the commanding officer could have done, if the accused has appealed to be tried by District Court Martial instead of being punished by his commanding officer.

M. Law, chap. v.,
para. 83.

(5) When the members of the court are determining the sentence they should consider the nature of the offence, character, age, service, and experience of the accused ; whether the man received provocation or not.

A.O. (110),
April 1914.

R.P., 48.

(6) And the prevalence of crime in the garrison or district where the accused is serving. Attention to this fact should be stated periodically in orders, and must not be brought by special direction to the notice of the court.

R.P., 48.

K.R., 583 (xii).

If a soldier is tried on two or more charges, the court can punish him on the most serious offence, which entails the heaviest sentence.

A.A., sec. 75.
K.R., 586.

In cases where a soldier is tried for theft the court places the man under stoppage for the full amount.

Example.—If a soldier is charged with stealing ten pounds, and five pounds were found in his possession, the court would place him under stoppages to make good ten pounds ; but the five

GUIDE TO COURTS MARTIAL DUTY 27

pounds found in his possession would be handed over by order of the confirming officer to its lawful owner, and when the sum of five pounds had been paid by the accused, the sentence of the court of stoppage would be complete.

RECOMMENDATION TO MERCY.

The court may recommend a man to mercy; if they do so they must enter their reasons, the number of votes it was passed or rejected by, and also any recommendation for the restoration of service forfeited.

Example.—A soldier convicted of desertion or fraudulent enlistment forfeits service towards pension and discharge.

If a court martial pass a sentence of death, two-thirds of the members must concur.

Recommendation
to mercy.
A.A., sec. 54 (9.)
R.P., 49.

A.A., sec. 79.
M.L., chap. v.,
para. 88.
K.R., 273.

A.A., sec. 48.
K.R., 585.

WRITING THE SENTENCE IN DAYS, ETC.

The following points shall be noted in writing sentences:

(a) A sentence of imprisonment or detention of exactly one or two years shall be written in years.

(b) A sentence of imprisonment or detention not amounting to six months in days.

(c) Other terms in days or months and days: e.g. seven months; or imprisonment as the case may be; e.g. twelve months and eleven days.

Writing the
sentence in days,
etc.

K.R., 585.

SENTENCE ON AN OFFENDER WHO IS UNDERGOING PUNISHMENT BY A PREVIOUS COURT MARTIAL.

If the court is trying an offender who was tried by a previous court and a portion of its sentence is unexpired, the court sentences the man to the punishment they consider he should get for the crime for which they are

K.R., 584.
Sentence on an
offender who is
undergoing
punishment by a
previous court
martial.

28 GUIDE TO COURTS MARTIAL DUTY

trying him, and add to it the amount of unexpired sentence of the previous court :

E.g. a soldier was sentenced to eighty-four days' detention on the 1 Sept., 1915. He is tried again by court martial. He has undergone forty-two days' detention of that sentence ; he still has forty-two days to do. The court considers his punishment for their decision is one hundred days' detention ; the sentence of the court will be one hundred and forty-two days' detention.

DATING AND SIGNING THE PROCEEDINGS.

The president signs and dates the proceedings and forwards them to the confirming officer.

It is advisable for the president to write the date instead of saying the 11th Sept., 1915, as it is more difficult for an unauthorised person to alter the date if written in full.

The date the sentence commences to count from is the first day the president signed the proceedings.

RULES FOR FIELD PUNISHMENT.

(1) Can be awarded on active service by court martial under the following conditions.

(2) Not exceeding three months by court martial.

(3) The maximum amount of this punishment must not exceed twenty-one days in all ; three days out of four, and not more than two hours a day.

No injury or permanent mark to be inflicted on the man. It must be discontinued if certified by a medical officer it would be prejudicial to his health.

Dating and
signing the
proceedings.

R.P., 50.
M.L., p. 695.

A.A., sec. 68.

M.L., p. 721.
Rules for field
punishment.
A.A., sec. 44.

GUIDE TO COURTS MARTIAL DUTY 29

Field punishment is of two kinds :

(1) The offender may be secured by fetters, irons, etc., to a fixed object, and be under the same restraint as if he were undergoing a sentence of hard labour.

(2) The difference is that he is not fixed to a stationary object as in (1).

This punishment will be carried out regimentally when the troops are on the move ; when halted, the provost marshal or his assistant supervise the punishment.

CUSTODY OF PROCEEDINGS OF COURT MARTIAL. LOSS OF PROCEEDINGS OF COURT MARTIAL.

The proceedings are in the custody of the president or of the Judge Advocate until they are received by the officer to whom they should be sent, who is usually named in the order for the court to assemble. If lost before being confirmed, if there is a copy of the proceedings it can be confirmed, if certified as a true copy by the president or Judge Advocate. If no copy is available, any member of the court may write from memory the principal points, such as the charge, the finding, sentence of the court, and if the accused does not object, the matter shall be written and signed by all the members of the court, and can be confirmed. If the accused objects, he can be tried again and the court shall be dissolved.

Custody of
proceedings of
court martial.
R.P., 100.
Loss of proceed-
ings of
court martial.

PROMULGATION OF SENTENCE OF COURT MARTIAL.

The sentence of the court shall be promulgated. The charge, finding, sentence, and confirmation are usually read out on parade in the presence of the accused.

Promulgation of
sentence of
court martial.
R.P., 53.
K.R., 593.

30 GUIDE TO COURTS MARTIAL DUTY

REVISION OF A COURT MARTIAL.

Revision.
M.L., p. 698

The confirming officer can send back the proceedings for revision, but only once—if he does so, no fresh evidence bearing on the case can be taken.

A.A., sec. 54.

If the president or member of the court is absent on revision, evidence as to the reason of such absence is taken—the reason for reassembly of the court will be read.

M.L., p. 698.

If by reason of absence the legal number of members are not present, the confirming officer shall either deal with the case or dissolve the court, and form a new one. If the court is not reduced below the legal minimum, and the president is absent, the senior member can be appointed president and proceed with the court.

A.A., sec. 53.

COURSES OPEN TO THE COURT.

R.P., 52.

(1) The court can adhere to their former finding and sentence.

(2) If the finding is sent back for revision the court can alter a finding and let the sentence stand or decrease it.

(3) If the sentence is sent back, the court can let it remain or pass a new sentence, provided it is not greater than the former sentence.

(4) In no case can a court find a man guilty of a charge of which they previously found him “not guilty.”

R.P., 51.

(5) If the court had passed a legal and partly illegal sentence, on revision they would pass the legal portion again.

R.P., 51.

(6) If the court had passed a totally illegal punishment, on revision a legal punishment can be passed by the court.

POWERS OF THE CONFIRMING OFFICER.

The powers of the confirming officer :

(1) Send back the finding or sentence, or both, for revision.

(2) Confirm, refuse to confirm.

(3) Mitigate the sentence to one of the same kind, but less severe : e.g. forty-two days' detention to twenty-four days' detention.

(4) Remit, that means alter, part of the sentence, such as forty-two days' imprisonment to forty-two days' without hard labour, or wash out the whole of the sentence.

(5) Commute the sentence to one lower down in the scale of punishments : e.g. death commuted to penal servitude.

(6) Order stolen property found on a soldier convicted of theft to be restored to its lawful owner.

(7) If a sentence is informally expressed vary it : e.g. a district court martial passing three years' imprisonment ; he can alter it to two years because the three years is legal though exceeding its powers of imprisonment, as two years is the maximum amount any court can sentence a person to.

Powers of the confirming officer.
R.P. 51 (2).
R.P., 57, note

A.A., sec. 44.

A.A., sec. 75.
K.R., 586.

R.P., 56.
R.P., 56
A.A., sec.
A.A., sec 68.

A COURT OF INQUIRY ON ILLEGAL ABSENCE

After a period of twenty-one days when a soldier is absent without leave a court of inquiry is held to investigate the case—this period does not include the first day the man was absent or the day the court was held in counting the twenty-one days.

The court consists of three members including a president.

The court is not sworn, but the evidence of the witnesses is taken on oath.

A court of illegal absence.
A.A., sec. 72.
M.L., p. 638.
K.R., para. 673.

32 GUIDE TO COURTS MARTIAL DUTY

The witness states the day the man absented himself, and that he has not seen him since, as he is still absent, and states the deficiencies of his kit if there are any.

Any witness may give evidence on behalf of the absentee who wishes.

The court before recording any statement must satisfy themselves :

(1) That the absentee was in possession of a kit or a portion of one, at a reasonable time before he absented himself.

(2) That an inventory of his kit was taken and any deficiencies noted.

(3) That some or none of the articles have been found that were deficient.

All the members of the court sign the proceedings and forward such to the commanding officer.

Having made a declaration that the man was absent from a certain date, and he is still illegally absent ; also stating deficiencies of kit.

The commanding officer will enter the declaration of the court in the regimental books, and destroy the proceedings of the court.

Off

ces
re
re
mer
D. ca
cha

the
wer
h
ces
red
h b
C.M.
ass
16.

Description of the Court.	By whom the C.M. is Convened.	The Rank of the President of the Court.	Number of Officers composing the Court.	Offenders the Court Can or Cannot Try.	Offences.	Powers of Punishment and Restrictions.	Officer who has Power to Confirm.	General Remarks.
Regimental Court Martial. M.L., chap. v., para. 1. A.A., sec. 47.	Any officer who has power to convene a General Court Martial or District Court Martial. A.A., sec. 47. A Commanding Officer not below the rank of Captain. K.R., 559. M.L., chap. v., para. 23.	The President should (if available) be a Captain, but a subaltern can be President: (a) If a Captain is not available. (b) On board ship. (c) On the line of march. A.A., sec. 47 ; K.R., 510.	Three: including the President, legal minimum. Officers must have at least one year's commissioned service, and, if possible, should all belong to the same corps as the accused. R.P., 19 (c) ; M.L., chap. v., para. 9. A.A., sec. 47 (note 4).	A N.C.O. above the rank of Corporal, if possible, should not be tried by this C.M. K.R., 438. But on board (H.M.) ship in commission a N.C.O. can be tried, if the Captain of the ship and the Officer Commanding the troops think it necessary. M.L., page 729. In no case can a Warrant Officer (A.A., sec. 182) or camp follower on Active Service be dealt with. M.L., page 534.	Offences which require slightly more severe punishment than a C.O. can award; M.L., chap. v., para. 15. As the C.O. has power to deal with most offences not required to be dealt with by D.C.M. a R.C.M. will rarely be assembled. R.P., 16.	Maximum, 42 days' detention. A.A., sec. 47. Fine, maximum, £1, for drunkenness. A.A., sec. 19. To be placed under stoppages for loss, damage, etc., to kit, clothing, arms, etc. A.A., sec. 24, 138 (4), but cannot award death, penal servitude, imprisonment or discharge with ignominy. A.A., sec. 32, 44. Reduce a non-commissioned officer to a lower grade of N.C.O.—To the ranks, or order him to forfeit seniority in his present rank. R.P., 47.	Any officer who can confirm a G.C.M. or D.C.M. (1) The Convening Officer, or (2) an officer who has the power to convene at the date of confirmation. A.A., sec. 54 (1). M.L., chap. v., para. 23.	Officers must not be disqualified or ineligible to sit as members. Disqualified (R.P., 19) as under. (1) The C.O. of the accused. (2) The officer who investigated the case in the absence of the C.O. (3) The company officer who investigated the charge. (4) The officer who prepared the summary of evidence. (5) The Prosecutor or any of his witnesses, or any officer who sat on a Court of Inquiry that was the subject of the charge before the Court Martial. A.A., 50 (6). 6. An officer who has a personal interest in the case. 7. The Provost Marshal or the Assistant Provost Marshal in the case of a Field General C. Martial. R.P., 106 (d). A.A., sec. 50, note. Ineligible. Not of required rank in service, or if not subject to Military Law. A subaltern cannot sit on the trial of a Field Officer. R.P., 21 (b). R.P., 19.

fences.

fences, ex-
those of a
aggravated
or where
ender bears
character,
e state of
line is lax in
ison, corps,
strict.

2.

Description of the Court.	By whom the C.M. is Convened.	The Rank of the President of the Court.	Number of Officers composing the Court.	Offenders the Court Can Try.	Offences.	Powers of Punishment and Restrictions.	Officer who has Power to Confirm.	General Remarks.
District Court Martial. A.A., sec. 48. Chap. v., paras. 1 and 3.	By any officer who can convene a G.C.M. An officer who can convene a G.C.M. can empower an officer not below the rank of Captain to convene a D.C.M. A.A., sec. 123 (b).	A Field Officer; if not available, a Captain. A.A., sec. 48 (a). In emergency a subaltern. K.R., 558. A.A., sec. 48. In no case can a subaltern sit as President on the trial of a Warrant Officer. A.A., sec. 182 (9). M.L., chap. v., para. 14.	Not less than 3, but in complicated cases 5 officers may be appointed, usually a Field Officer, Captain, and a subaltern. A.A., sec. 48 (4). Required service, at least two years as a Commissioned Officer. R.P., 19. Officers should belong, if possible, to different corps. R.P., 20. A.A., sec. 50.	All offenders except officers. A.A., sec. 48 (g).	Most offences, except those of a very aggravated kind, or where the offender bears a bad character, or the state of discipline is lax in a garrison, corps, or district. K.R., 552.	Imprisonment or detention, maximum 2 years. A.A., sec. 44, 68. Discharge with ignominy. A.A., sec. 32. Forfeitures. Fine £1 for drunkenness. A.A., sec. 19. Stoppages for damage to kit, loss, etc. A.A., sec. 24 and 138. As regards N.C.O.s, in addition : Reduction to the ranks, or to a lower grade of N.C.O. A.A., sec. 44. Forfeit seniority in his present rank. R.P., 47, and A.A., sec. 44. Fine, £1. A.A., sec. 19. If a C.M. sentence a N.C.O. to be imprisoned or to detention, they shall first sentence him to be reduced to the ranks. A.A., sec. 183.	An officer who can confirm a G.C.M., or any officer under his command may be empowered by him to do so, if he is not below the rank of Captain. A.A., sec. 122.	A C.M. could fine a N.C.O., maximum £1 for drunkenness. A.A., sec. 19. Or, in addition, reduce him to the ranks or a lower grade, without detention or imprisonment.



Description of the Court.	By whom the C.M. is Convened.	The Rank of the President of the Court.	Number of Officers composing the Court.	Offenders the Court Can Try.	Offences.	Powers of Punishment.	By whom Confirmed.
General Court Martial. A.A., sec. 48. M.L., chap. v., paras. 1, 4.	By His Majesty the King. By an officer holding a warrant from H.M. the King; and this officer can empower an officer to convene a G.C.M. In extreme cases a Captain. A.A., sec. 122. M.L., pages 722-726. M.L., chap. v., para. 19.	A General or Colonel if not a Field Officer, but in extreme cases a Captain. A.A., sec. 48 (9). R.P., 21 (note). K.R., 578.	In the United Kingdom, Malta, Gibraltar, and India, legal minimum 9 officers, elsewhere 5. A.A., sec. 48 (3). Minimum service 3 years, commissioned as an officer. R.P., 19. Officers, if possible, of different corps. A.A., sec. 50; R.P., 20. Five officers sitting on the court must not be below the rank of Captain. A.A., sec. 48. In no case can a subaltern sit on the trial of a Field Officer. R.P., 21 and A.A., sec. 48 (7). On the trial of a subaltern two officers of that rank are sufficient. R.P., 21. All officers should be of equal if not superior rank to the accused. R.P., 21. If a C.O. is being tried, as many officers as possible on the court should be commanding officers, and hold similar rank to the accused. K.R., 518.	G.C.M. can try all persons subject to Military Law.	All Military offences; but can only try murder, manslaughter, treason, felony, and rape, on (1) Active Service, (2) at Gibraltar, (3) places without H.M. Dominions, and (4) abroad within H.M. Dominions, if no Civil Court exists within 100 miles of where the offence was committed. A.A., sec. 44 (a).	All the powers of a D.C.M., and in addition, death if two-thirds of the members of the Court concur. A.A., sec. 44-48. Penal servitude not less than 3 years. A.A., sec. 44 and 68. Officers: death, penal servitude, imprisonment, or detention, maximum 2 years. A.A., sec. 44, 68. Cashiering. A.A., sec. 16. Dismissal from H.M. Service. Forfeit seniority in his present rank or in the army. R.P., 47. An officer of the Indian Army may be sentenced to forfeit all or part of his service for promotion. Army Annual Act, 1914. Severe reprimand or reprimand. A.A., sec. 44.	The King in the United Kingdom. Abroad, an officer holding a warrant from an officer empowering him to do so, not below the rank of Field Officer. In extreme cases a Captain. A.A., sec. 122 (e) and (f), M.L., pages 722-726. A sentence of death (except passed on Active Service) requires the approval of the Governor of the Colony, in addition to the Military Authorities. In India such approval is required by the Governor-General, but only for the crimes of murder and treason; but both in India and a Colony, if a civil offence is tried under A.A., sec. 41, and the Court Martial passes a sentence of penal servitude; in India the Governor-General approves and in a Colony the Governor. M.L., chap. v., para. 99-100. A.A., sec. 54 (7, 8, 9).

ferences

I Acti
abro
, agai
h or p
inha
I cou
ve S
ffence
5.
c. 49

Description of the Court.	By whom the C.M. is Convened.	The Rank of the President of the Court.	Number of Officers composing the Court.	Offenders the Court Can Try.	Offences.	Powers of Punishment and Restrictions.	By whom Confirmed.
Field General Court Martial. A.A., sec. 49. M.L., chap. v., para. 24-26. R.P., 105-123.	Not on active service it can be convened by any officer in command of a detachment or portion of troops in a country beyond the seas. A.A., sec. 190, 28. The offender must be under his command—the offence must be against the person or property of an inhabitant or resident of the country, but a Field General Court Martial should not be assembled if the force is not on active service by an officer, unless he is authorised to do so (within his Majesty's Dominions) by the General Officer commanding the forces to which he belongs. A.A., sec. 49. R.P., 105. On active service the commanding officer of any corps or portion of a corps or by an officer in immediate command of a body of troops; where it appears to him or otherwise that a person subject to military law has committed an offence.	A Field Officer, unless the Convening Officer is below that rank. If possible an officer not below the rank of Captain. R.P., 106. A.A., sec. 49 (c).	Three officers; but the court may consist of two officers only, officers belonging to any corps. If sufficient officers are not available, the Convening Officer can appoint himself President. Officers, if possible, should have three years' commissioned service or over, and at least one year. R.P., 106.	All persons subject to Military Law. R.P., 105 note. A.A., sec. 175 note.	Not on Active Service abroad, offences against the person or property of the inhabitants of the country. On Active Service, any offence. R.P., 105. A.A., sec. 49.	The same as a General Court Martial. A.A., sec. 44, 48. But if the Court is composed of two members, it cannot pass a sentence of death or penal servitude, A.A., sec. 44, 48. and a sentence of death must be passed by the vote of all members of the court. R.P., 118. A.A., sec. 49 (2).	On Active Service by the senior officer present not below the rank of Field Officer at the place. If there is no officer of that rank present, then the senior officer at some other place not below the rank of Field Officer. R.P., 119 (1). When a sentence of death, penal servitude, or detention is confirmed, the proceedings shall be sent to the officer in chief command of the forces in the field with which the accused is serving, and a sentence of death or penal servitude shall not be carried out pending his decision. R.P., 120. Not on Active Service by an officer who can confirm a General Court Martial. R.P., 120.

Law
Const
K545g

241195

King, Thomas

Guide to courts martial duty.

University of Toronto Library

**DO NOT
REMOVE
THE
CARD
FROM
THIS
POCKET**

Acme Library Card Pocket
LOWE-MARTIN CO. LIMITED

UTL AT DOWNSVIEW



D RANGE BAY SHLF POS ITEM C
39 11 12 02 11 001 1